

PUBLIC HEARING FOR NONCONFORMANCE
PENALTIES FOR ON-HIGHWAY HEAVY-DUTY DIESEL ENGINES

Ann Arbor Michigan

March 5, 2012

10:06 a.m.

Presider

Chris Grundler

Panel Members

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Chuck Moulis

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1 Ann Arbor, Michigan

2 10:06 a.m.

3 * * *

4 MR. GRUNDLER: Good morning. Welcome to
5 today's hearing. My name is Chris Grundler and I'm the
6 Deputy Director of EPA's Office of Transportation and
7 Air Quality, and I'll be the presiding officer for this
8 hearing today. I've got a brief statement that I need
9 to read and then we'll get started.

10 We're hearing testimony today on both the
11 Interim Final Rule and the Notice of the Proposed
12 Rulemaking establishing nonconformance penalties or NCPs
13 for heavy-duty diesel engines that could be used by
14 manufacturers of heavy-duty diesel engines unable to
15 meet the 2010 model year NOx emission standards. These
16 provisions allow a manufacturer to produce and sell
17 nonconforming engines upon payment of a penalty.

18 The regulations being considered today were
19 published in the Federal Register on January 31st, 2012,
20 and the public comment period for this closes on the
21 4th of April 2012.

22 To my right representing EPA with me is
23 Michael Horowitz from the Office of the General Counsel.
24 To my left is Matt Spears and Chuck Moulis of my office.

25 Before getting started, I'd like to note that

1 we're conducting this hearing in accordance with section
2 307(d)(5) of the amended Clean Air Act which requires
3 EPA to provide interested persons with an opportunity
4 for oral presentation of data, views or arguments, in
5 addition to an opportunity to make written submissions.
6 This hearing provides the opportunity for such oral
7 presentations.

8 The official record of this hearing will be
9 kept open until April 4th, 2012, for the submission of
10 rebuttal and supplemental testimony. The hearing will
11 be conducted informally, and formal Rules of Evidence
12 will not apply. The Presiding Officer, however, is
13 authorized to strike statements from the record which
14 are deemed irrelevant or needlessly repetitious and to
15 enforce reasonable limits on the duration of the
16 statement of any witness. Given that we only have four
17 testifiers, I don't think that will be a problem today.

18 Witnesses should state their name and
19 affiliation prior to making their statement. When a
20 witness has finished his or her presentation, members of
21 this panel will have an opportunity to ask questions
22 related to the testimony. Witnesses are reminded that
23 any false statements or false responses to questions may
24 be a violation of law. Witnesses will have a chance
25 later in the hearing to provide rebuttal and

1 supplemental testimony. In addition, witnesses can
2 submit rebuttal and supplemental testimony until
3 April 4th, 2012.

4 If any members of the audience that wish to
5 testify have not already signed up, please submit your
6 name at the reception table and we'll try to accommodate
7 everyone who wishes to testify. Everyone attending
8 should also send -- sign the register at the reception
9 table whether or not you testify.

10 Finally, if you would like a transcript of the
11 proceedings, you should make arrangements directly with
12 our court reporter during one of the breaks.

13 Before we begin, are there any clarifying
14 questions that you would like to address?

15 We are now going to take a role call of those
16 listening in by phone. If there is anyone on the phone,
17 please identify yourselves.

18 MS. LAVENGOOD: Carol (inaudible).

19 STENOGRAPHER: Carol -- speak up. Introduce
20 yourself again and speak up, please.

21 MS. LAVENGOOD: Yes. This is Carol Lavengood
22 with Cummins.

23 MR. GRUNDLER: Anyone else on the phone?

24 MS. AULT: This is Susan Ault with Volvo.

25 MR. KAYES: David Kayes, Daimler.

1 STENOGRAPHER: Spell your names, please, as
2 you go.

3 MR. KAYES: Last name K-A-Y-E-S.

4 MR. GRUNDLER: Anyone else?

5 MR. SMITH: David Smith with Volvo.

6 MR. TASIK: Yes, Carl Tasik, Volvo.

7 STENOGRAPHER: Spell it, please.

8 MR. TASIK: That's Tasik, T-A-S-I-K.

9 MR. GRUNDLER: Anyone else on the phone?

10 Okay. We'll begin with our first speaker
11 John Wall of Cummins. Welcome.

12 Following Mr. Wall will be Anthony Grezler of
13 Volvo, Don Keski of Daimler, and Steven Covey of
14 Navistar.

15 MR. WALL: Good morning. Thank you for the
16 opportunity to testify on the proposal to establish
17 nonconformance penalties for heavy-duty diesel engines.
18 My name is John Wall. I'm the Chief Technical Officer
19 of Cummins, Inc.

20 Headquartered in Columbus, Indiana, Cummins
21 designs, manufactures, distributes and services engines
22 and related technologies for a variety of applications
23 all over the world. The company is an advocate for
24 consistent and responsible regulations that provide
25 environmental benefit and recognize the needs of

1 business by offering clear direction and incentives to
2 manufacturers that create innovative solutions.

3 The Heavy-Duty Highway Rule that EPA finalized
4 in 2001 embodies these aspects. Over ten years ago, EPA
5 and the industry started on a collaborative path to
6 achieve near-zero emissions of particulate matter and
7 oxides of nitrogen for on-highway heavy-duty engines.
8 The regulation provided clarity, certainty and lead-time
9 to achieve the stringent standards. The Agency also
10 included flexibility mechanisms to help manufacturers
11 comply such as the ability to average, bank and trade
12 credits and a phase-in period from 2007 through 2009 to
13 meet the NOx standard.

14 Recently, EPA came to the conclusion that a
15 manufacturer was unable to achieve this NOx standard.
16 As a result, the Agency is establishing Non-Conformance
17 Penalties or NCPs. Under the Clean Air Act, NCPs permit
18 a manufacturer who cannot meet an emission standard for
19 technological reasons to continue to sell non-conforming
20 engines by paying a monetary penalty until they can
21 comply. Importantly and as stated by EPA in their
22 proposal, the Clean Air Act NCP provisions require that
23 the penalty be set at such a level that it removes any
24 competitive disadvantage to a complying manufacturer.
25 In other words, it should cost less to comply than not

1 to comply. Unfortunately, EPA did not meet this
2 requirement in the Interim Final Rule, as the penalty
3 levels enacted are too low. This discrepancy must be
4 addressed appropriately in the Final Rule that is the
5 subject of this meeting.

6 EPA refers to the challenges of determining
7 the penalty level in their rulemaking documents. We
8 agree that this is a -- this is complicated and requires
9 a careful and deliberate process. That is why we are
10 strongly opposed to EPA taking action as an Interim
11 Final Rule without prior proposal and public comment.
12 EPA should follow due process to allow all parties to
13 contribute their expertise and perspective to create a
14 sound final rule. We, along with others, have taken
15 action on EPA's use of an Interim Final Rule process, so
16 we will focus our comments today on the proposed
17 rulemaking.

18 Cummins has unique expertise as a global
19 engine manufacturer that gives us firsthand experience
20 with evaluating the cost of compliance for this
21 situation and helping the Agency determine the
22 appropriate level for the penalties. We employ the
23 broadest technology portfolio in the industry to meet
24 emissions standards around the world for on and
25 off-highway products.

1 The Heavy-Duty Highway Rule finalized in 2001
2 did not mandate any specific technology. Instead, the
3 regulation laid out a ten-year roadmap for ever
4 tightening emission standards. Cummins evaluated each
5 step along with customer requirements to determine the
6 right technology approach from a suite of options. In
7 2002, this involved the adoption of cooled Exhaust Gas
8 Recirculation or EGR to reduce NOx. The particulate
9 matter standards dropped significantly in 2007, which
10 led to the application of diesel particulate filters or
11 DPFs.

12 After achieving a 99 percent reduction in
13 particulate matter, the next significant challenge was
14 NOx. In 2007, Cummins was the first diesel engine
15 manufacturer to certify in all 50 states to the
16 stringent 2010 NOx standard. In partnership with
17 Chrysler, we used a NOx Adsorber catalyst for the 6.7
18 liter Turbo Diesel to achieve this milestone a full
19 three years ahead of the schedule laid out by EPA.

20 Looking ahead to meeting the NOx standard for
21 the rest of our engines, Cummins considered a range of
22 technological solutions. We initially announced that we
23 would use Selective Catalytic Reduction or SCR for our
24 midrange engines and an EGR-only solution for
25 heavy-duty. However, in 2008, as we continued to

1 develop both systems, we saw significant improvements in
2 SCR efficiency and durability for heavy-duty
3 applications and decided to adopt SCR across all of our
4 heavy-duty and midrange engines in the US except for the
5 Chrysler pickup.

6 Thus, the question before the Agency over the
7 cost of compliance is not an intellectual exercise for
8 Cummins. We know exactly what it takes to change
9 direction and adopt the technology needed to comply with
10 the NOx standard. And we, along with our customers,
11 could not be happier with our choice to use SCR.

12 Customer "report cards" on the 2010 launch
13 indicate this has been their best ever experience with
14 emissions-driven technology change. In addition to
15 improved reliability, the Cummins SCR system is
16 delivering up to six percent better fuel economy than
17 the engines we produced in 2009. Indeed, the heavy-duty
18 on-highway engines we sell today are the most efficient
19 engines we have ever made at almost zero levels of NOx
20 and particulate matter.

21 SCR is continuing to improve and prove -- and
22 provides a foundation for the future. We continue to
23 improve the conversion efficiency of the SCR system
24 which is leading to even greater fuel economy
25 improvements. This moves us well down the path of

1 meeting the new greenhouse gas and fuel efficiency
2 standards adopted by EPA and NHTSA.

3 Cummins SCR-equipped engines are working
4 effectively not just in the lab but under real-world
5 driving conditions to deliver the required NOx emission
6 reductions. By controlling exhaust temperatures through
7 thermal management, Diesel Exhaust Fluid or DEF is being
8 dosed to reduce NOx emissions under a wide range of
9 conditions, including stop and go, cold and lightly
10 loaded operation. Cummins has demonstrated particulate
11 matter and NOx control and full SCR system operation in
12 ambient temperatures from 0 degrees to over 110 degrees
13 Fahrenheit.

14 Additionally, Cummins continues to work with
15 EPA through guidance documents and certification to
16 ensure that the operator maintains the necessary supply
17 of DEF on the vehicle and does not interfere with the
18 proper function of the SCR system. Separate
19 examinations by the California Air Resources Board,
20 American Trucking Association, Cummins and others have
21 all confirmed that commercial vehicle operators are not
22 risking their time or money on trying to circumvent the
23 SCR system.

24 With that being said, let's be clear that
25 today's discussion is not about SCR versus EGR or any

1 other technology. Cummins engines use both SCR and EGR.
2 This is about setting the appropriate level for
3 penalties for any manufacturer, that after more than
4 10 years of lead time, does not comply with EPA's NOx
5 standard.

6 Cummins invested over 200 million dollars to
7 comply, and according to media reports, heavy-duty truck
8 prices increased by \$10,000 and medium-duty truck prices
9 increased by \$6,000 as the emissions surcharge for
10 2010-compliant equipment. Yet, EPA has proposed maximum
11 penalties of only \$,1900 for heavy heavy-duty engines
12 and less than \$700 for medium heavy-duty engines. While
13 the NCP calculation involves a variety of
14 considerations, it is clear that the penalties put forth
15 by EPA are significantly lower than what was experienced
16 commercially.

17 One of the main challenges highlighted by EPA
18 was that compliant manufacturers have not designed and
19 optimized in-production engines for the U.S. market at
20 0.5 grams per horsepower hour NOx. This is not true.
21 There are Cummins engines for sale at Family Emission
22 Limits of up to .5 grams per horsepower hour NOx using
23 credits. These are useful, practical examples of
24 optimization at the higher NOx levels.

25 By reducing NOx emissions more than required

1 in the past, Cummins generated NOx emissions credits to
2 be -- that could be applied today and in the future.
3 This is a win for the environment because it delivered
4 greater reductions sooner and because the credit balance
5 is discounted before it can be withdrawn for use,
6 ensuring a net absolute benefit for the environment in
7 addition to an early benefit. Thus, we are able to
8 certify some engines at emissions levels up to .5 grams
9 per horsepower hour NOx, we have engines at .35 grams
10 per horsepower hour, and we have engines at .2 grams per
11 horsepower hour. These engines are all optimized to
12 provide the best solution for our customers taking into
13 account cost, reliability, durability and fuel economy.

14 Why did we do this? At a higher NOx level, we
15 are able to deliver even greater fuel efficiency savings
16 for our customers.

17 Cummins is now fully engaged in making the
18 technological changes necessary to reduce these engine
19 emissions to .2 grams per horsepower hour NOx. We're
20 advancing technology to drive down NOx while
21 remaining -- maintaining and even improving fuel
22 efficiency. The product comparisons in this -- in this
23 NCP rulemaking are not a hypothetical exercise for
24 Cummins but are part of our development work going on
25 right now in our technical centers. We know exactly the

1 development, hardware, operational and other impacts of
2 this change. Cummins provided this as confidential
3 business information to the Agency in the months leading
4 up to this rulemaking and will submit written comments
5 over the next few weeks.

6 The Agency correctly recognizes in their NCP
7 rulemaking that optimized engines at .5 grams per
8 horsepower hour NOx and .2 grams per horsepower hour NOx
9 must be compared. However, this is not how the analysis
10 was conducted.

11 Instead of using available, real-life
12 experience as the basis for their calculation, and even
13 though stated differently in their technical support
14 document, EPA's analysis actually started with a fully
15 compliant engine as its baseline. The Agency then
16 backed off DEF consumption and made small hardware
17 changes with no change to fuel consumption at higher
18 NOx, creating a hypothetical .5 gram per horsepower NOx
19 engine that would not be competitive in the marketplace
20 and completely missing the point of operating at higher
21 NOx levels. Cummins is certified at a higher NOx level
22 and using credits specifically because of the well-known
23 NOx-fuel consumption relationship.

24 Furthermore, the SCR system efficiency
25 implicit in the EPA hypothetical non-compliant engine

1 was far below -- below ordinary system performance.
2 This further distorts the cost comparison and
3 underestimates the cost of compliance because the cost
4 of the hardware in the hypothetical noncompliant system
5 is too high.

6 Simply put, the Agency did not follow its own
7 methodology of comparing optimized engines at both the
8 upper limit and the standard. Since the .5 gram per
9 horsepower hour NOx engine that EPA selected was
10 essentially already compliant to .2 grams NOx, it
11 carried the full cost of compliance in the baseline.
12 Thus, the EPA analysis significantly understates the
13 cost of compliance. In effect, these penalty levels
14 leave the cost of compliance higher than the cost of
15 noncompliance, which is the wrong way around.

16 In summary, it's important to step back and
17 look at the big picture. EPA's Heavy-Duty Highway Rule
18 finalized in 2001 is one of the most significant
19 environmental accomplishments in this nation. Cummins
20 is proud to have been a partner with EPA and all U.S.
21 heavy-duty engine manufacturers in developing the rule,
22 and we have delivered technologies and products that
23 comply.

24 We support the principle in the Clean Air Act
25 for setting NCPs so that manufacturers who invested and

1 are achieving the emissions standards and their
2 customers should not be penalized compared to
3 manufacturers who do not comply.

4 Furthermore, manufacturers, especially those
5 with SCR systems which are capable of full compliance,
6 should not be enticed to pay NCPs to produce
7 noncompliant engines because it's more cost effective to
8 be noncompliant than it is to comply.

9 And vehicle owners and operators who buy
10 compliant engines should not be penalized compared to
11 their competitors who purchase noncompliant engines.

12 Please don't miss this point. This is not
13 about EGR versus SCR. It is not about one company
14 against the world. It's about all of us. It's about
15 compliant SCR versus noncompliant SCR. If the NCPs are
16 too low, all of us will be forced into noncompliance by
17 simple market economics.

18 EPA needs to set the NCPs at the appropriate
19 level to ensure the cost of compliance is not greater
20 than the cost of noncompliance. It's as simple as that.

21 We urge the Agency to follow due process
22 expeditiously and finalize a sound rule that ensures all
23 manufacturers are treated fairly and that the emissions
24 reductions as envisioned by the landmark 2001 rule are
25 fully realized.

1 Cummins appreciates the opportunity to testify
2 today. We'll provide this testimony and additional
3 written comments to the EPA docket.

4 Thank you.

5 MR. GRUNDLER: Thank you, Mr. Wall. Any
6 questions for Mr. Wall?

7 MR. SPEARS: I do not have any questions.

8 MR. HOROWITZ: None.

9 MR. WALL: Thanks.

10 MR. GRUNDLER: Thanks for coming.

11 Mr. Grezler.

12 MR. GREZLER: Are you going to put my slides
13 up?

14 (Discussion off record.)

15 MR. GREZLER: While she's doing that I can --
16 I can go ahead and introduce myself. I'm Anthony
17 Grezler. Good morning. I'm Vice President for
18 Government & Industry Relations with Volvo Group Truck
19 Technologies, and I'm here today representing Mack
20 Trucks and the Volvo Group.

21 I'd like to just start by thanking the EPA for
22 allowing me to make this statement today on an issue
23 that we consider to be of great importance to
24 Mack Trucks, to the Volvo Group, to the trucking
25 industry and to society.

1 Can you go ahead --

2 MS. IFFLAND: (Indicating).

3 MR. GREZLER: I can do it?

4 MS. IFFLAND: Yep.

5 MR. GREZLER: Thank you.

6 Over the next few minutes I will expand on
7 three fundamental points, the first being that Navistar
8 does not qualify for nonconformance penalties because
9 they do not fit the definition of a technological
10 laggard. Secondly, that even if NCPs are to be granted
11 to Navistar the penalties must be much higher than
12 proposed in order to avoid unjustly penalizing the
13 manufacturers who met the standard and to protect the
14 public by creating a sufficient disincentive for
15 exceeding emissions standards in the future. And third,
16 that there was no good cause for the unprecedented
17 Interim Final Rule under which Navistar has already
18 received two certificates of conformity.

19 Let me expand on the first point. First,
20 Navistar is not a technological laggard, which is
21 necessary to be eligible for nonconformance penalties
22 within the framework of the Clean Air Act.

23 A technological laggard is considered to be a
24 manufacturer who cannot meet a particular emissions
25 standard due to technological, not economic,

1 difficulties and who in the absence of NCPs might be
2 forced from the marketplace.

3 The 2010 emissions rule was promulgated in
4 2001. It went into effect in 2007 and it was fully
5 phased in on January 1st, 2010.

6 It is now 11 years after the rule was
7 finalized, five years after it took effect, and more
8 than two years since all other manufacturers became
9 fully compliant. Any reasonable effort to develop a
10 compliant product could have been implemented by now.

11 This slide shows reductions associated with
12 emissions changes in the last 14 years and the near-zero
13 NOx requirement in 2010. Every manufacturer except
14 Navistar met this standard as required in 2010.

15 In fact, Navistar has never publically
16 expressed any inability to meet the standard and has on
17 the contrary consistently positioned itself as a
18 technological leader. During January -- during
19 Navistar's January 2009 quarterly earnings conference,
20 the company chairman, president and CEO said that the
21 question that continues to arise all over the industry
22 is why are we doing EGR and everybody else is doing SCR,
23 and the answer for us is simple: Because we can do both
24 and we're the only ones that can do both and will show
25 you that we can do it.

1 It's very clear that Navistar could indeed do
2 both and could have met the .2 grams standard had they
3 chosen to. As early as 2006 the company's subsidiary
4 MWM International Motores was displaying heavy-duty
5 engines with -- equipped with SCR technology. And if
6 you visit Navistar's corporate website today, you'll
7 find detailed specifications for an SCR equipped version
8 of the company's MaxxForce engine.

9 In March 2011, Navistar's chairman and CEO
10 further stated relative to questions about their
11 technological capability "what we did is we submitted to
12 EPA a certification of .2 to take that argument away.
13 We don't plan on using this for awhile, but we're going
14 to have it out there on the shelf. It says it can be
15 done and we can meet the standards."

16 Finally, as recently as February 1st, 2012, a
17 Navistar executive was quoted saying during the
18 company's analyst day event that they are ready with an
19 engine that does meet the 2010 standard but won't
20 release it for sale because they can't get optimum
21 performance and fuel economy.

22 It's very clear that Navistar had access to
23 the same proven SCR technology that every other
24 manufacturer is using to meet the 2010 standard. They
25 chosen another path which they continue to claim as

1 recently as a few weeks ago can meet the standard.

2 Based on Navistar's own words and actions EPA cannot
3 categorize the company as a technological laggard and
4 therefore cannot grant the company NCPs.

5 Even if Navistar did qualify for NCPs, the
6 penalty proposed by EPA is grossly insufficient given
7 the investments other manufacturers had to make in order
8 to comply with the 2010 standard, the competitive
9 advantage being given to Navistar, and the societal
10 impact of allowing one manufacturer to continue to emit
11 more than two and a half times the NOx limit two years
12 after the standard went into effect.

13 In order to develop a fair and just NCP, EPA
14 must engage in formal, detailed discussions with
15 manufacturers regarding those manufacturers' cost of
16 compliance and the competitive disadvantage they will
17 face if certain players are allowed to sell noncompliant
18 engines.

19 These formal discussions did not take place
20 with Volvo and Mack prior to promulgation of the Interim
21 Rule, and the informal input that we were asked to
22 provide on very short notice was clearly not taken into
23 account in development of the proposed NCPs.

24 It is not easy for us to calculate what it
25 would have cost us to reach .5 grams of NOx rather than

1 the required .2 grams because it never occurred to us
2 that staying at .5 grams was even an option. It should
3 be noted that the difficulty and therefore the cost of
4 meeting the 2010 standard far exceeded the difficulty
5 and cost of meeting the 2004 standard. Having said
6 this, the calculations we've conducted over the last
7 several weeks have led us to conclude that the cost
8 differential to go from .5 gram to .2 is at least
9 \$11,600 per engine.

10 That \$11,600 figure also seems to be more in
11 line with EPA's own calculations for determining NCP's
12 in the past. The NCPs promulgated in 2004 for the 2004
13 rule called for a penalty of \$15,508 for NOx emissions
14 at two and a half times the standard. The EPA ruled at
15 that time that exceeding the 2004 standard by even
16 .3 grams against a much easier target merited a penalty
17 of \$2,200. Why should Navistar be allowed to pay less
18 than that for emitting two and half times the 2010
19 standard.

20 Furthermore, since the NCPs are designed to
21 address a lag in implementation, the lag time should be
22 measured beginning with the date which the standard went
23 into effect; in this case January 1st, 2010. Navistar
24 should therefore be in the third year for penalty
25 escalation which would increase penalties over year one.

1 None of these calculations take into account
2 another factor that should be reflected in a fair NCP;
3 that is, the negative commercial impact that compliant
4 manufacturers like Mark -- Mack and Volvo suffer when
5 some manufacturers are given an unfair advantage and
6 therefore a greater share of the market.

7 Let's be clear. EPA is allowing Navistar to
8 sell cheaper, dirtier engines, and because they are
9 dirtier they are also more fuel efficient than they
10 would be if they had to be at the .2 gram standard.
11 This significantly affects Navistar's competitive
12 position in the marketplace. If we were allowed to
13 target .5 gram NOx level, we could have designed a lower
14 cost engine with even better fuel efficiency contrary to
15 EPA's assumption. The trade-off between NOx and fuel
16 efficiency is well-known, and even though SCR provides
17 for imfu -- improved efficiency versus EGR at the same
18 NOx level, there is still an opportunity for fuel
19 efficiency improvements of about 2 percent if we could
20 have targeted a half gram level.

21 EPA's recognition of the trade-off between NOx
22 and fuel efficiency has been inconsistent of late, which
23 has worked in Navistar's favor. The agency did not
24 recognize the trade-off in the noncompliance penalty
25 rule, where doing so would lead to a higher penalty.

1 But it was recognized in the recent heavy-duty
2 greenhouse gas rule in which EPA provided a substantial
3 concession to Navistar by allowing the company to
4 significantly increase their greenhouse gas emissions if
5 they moved from .5 gram to .2 gram NOx level. The EPA
6 further notes in the greenhouse gas rule that the Agency
7 expects significant gains in fuel efficiency if FCR
8 manufacturers improve NOx catalyst conversion
9 efficiency. Allowing tailpipe NOx to increase has a
10 similar effect on fuel efficiency.

11 In terms of impact on the U.S. economy, it
12 should also be noted that any sales Mack and Volvo have
13 lost or will lose as a result of Navistar's unfair
14 advantage means fewer trucks built in America by
15 American workers in American factories. We do not build
16 any trucks outside the U.S. for this market. Navistar,
17 on the other hand, built in Mexico and nearly half the
18 class A vehicles that it sold in the U.S. over the past
19 two years.

20 Lastly, from a purely environmental standpoint
21 the NCPs are not sufficient to reflect the egregiousness
22 of Navistar's noncompliance. More than two years after
23 the implementation of a standard they knew about nine
24 years in advance Navistar's products continue to spew
25 two and a half times the NOx limit. And the currently

1 proposed penalty represents only a slap on the wrist.

2 Finally, although we are discussing the NPRM,
3 I would like to take this opportunity to object to the
4 unprecedented Interim Final Rule under which Navistar
5 has already received two certificates of conformity.

6 The EPA stated in the Interim Final Rule that
7 there is no risk to the public interest in ignoring past
8 practice and rushing through NCPs without allowing for
9 the full process and industry input. If there is no
10 risk to the public in allowing a manufacturer to emit
11 two and a half times the standard two years after it
12 took effect, one wonders why we have a standard at
13 .2 grams to begin with.

14 Navistar was very open for several years about
15 their strategy of using credits after 2010 and has been
16 using them for more than two years. If they were in
17 danger of running out of credits before they were able
18 to produce an engine that meets the standard, they
19 should have requested nonconformance penalties early
20 enough to allow for a proper process. The fact that
21 they did not take this step should not work to their
22 advantage. It appears that in this case, as in so many
23 others, they have succeeded in manipulating the system.

24 An NCP by its very nature requires input from
25 complying manufacturers to establish appropriate penalty

1 levels, yet EPA stated in the Interim Final Rule that in
2 this case notice and comment on the rule were
3 impractical, unnecessary, or contrary to the public
4 interest, while inventing a new rationale for
5 fabricating inputs into its NCP formula. For all the
6 reasons previously cited, Mack and Volvo strongly
7 disagree.

8 In closing, I will say that for many years now
9 Mack and Volvo trucks have been working in good faith
10 for the Environmental Protection Agency. We invested
11 more than 425 million dollars in going from the 2007 to
12 2010 emissions standards. We were the first to have EPA
13 certification of our heavy-duty engines and we met the
14 .2 gram standard without credits. We delivered on our
15 commitments to the industry, to the environment, and to
16 society.

17 While we don't expect any rewards for doing
18 the right thing, we don't expect to be penalized either.
19 But that is exactly what you will be doing to us and to
20 the rest of the compliant manufacturers if you follow
21 through with the currently proposed NCP level. Neither
22 justice nor the environment is served when noncompliance
23 and manipulation of the system are permitted to pay off
24 in a competitive advantage.

25 On behalf of Volvo and Mack I thank you for

1 the opportunity to address these important issues, and
2 as always we stand ready to assist you in any way as you
3 continue your deliberations. Thank you.

4 MR. GRUNDLER: Thank you. I have one
5 question. Do -- does Mack or Volvo have information
6 that you could provide to me today or subsequent to
7 today with respect to the market impacts you're
8 referencing concerns about loss of market sales --
9 market share or market sales to Navistar, can you
10 provide that information?

11 MR. GREZLER: Yeah. I can't give you the
12 details today, but we will do so within the comment
13 period. But clearly any -- any sales that are given to
14 noncompliant manufacturers are sales where we -- we lose
15 a portion of that market. And it has a big impact on
16 our -- our profitability because of the marginal profit
17 of additional sales. But we can provide that and will
18 do so.

19 MR. GRUNDLER: Thank you. Have any questions?

20 MR. SPEARS: I have no questions.

21 MR. HORWOITZ: None.

22 MR. GREZLER: Okay.

23 MR. GRUNDLER: Thank you for coming.

24 Mr. Keski of Daimler.

25 MR. KESKI-HYNNILA: Morning. My name is Don

1 Keski-Hyynnila. My title is Manager of Compliance and
2 Regulatory Affairs at Detroit Diesel Corporation.

3 Daimler Trucks North America and Detroit
4 Diesel welcome this opportunity to present publically
5 our comments on EPA's Notice of Proposed Rulemaking
6 establishing nonconformance penalties for on-highway
7 heavy-duty engines for the 2010 NOx standard and the
8 EPA's Interim Final Rule which became effective
9 January 31st, 2012.

10 We at DTNA and DDC have enjoyed a very good
11 working relationship with the EPA, for example, on the
12 greenhouse gas regulations, to which we recently
13 certified our Model Year 2013 heavy-duty truck products
14 one year early. Additionally, we recently completed an
15 EPA selective engine audit, the results of which
16 confirmed compliance of our SCR equipped Detroit branded
17 heavy-duty on-highway engines to the very stringent
18 .2 gram per brake horsepower hour NOx standard.

19 That said, the recent NCP NPRM and Interim
20 Final Rule have not followed suit. As EPA knows from
21 our stay request, DTNA and DDC do not believe that EPA
22 has met the statutory and regulatory requirements for
23 establishing this NCP. The EPA would have benefited
24 from formal comments before the Interim Final Rule
25 became effective. We hope that EPA carefully considers

1 and that the Final Rule reflects the comments that EPA
2 receives today and the more detailed written comments
3 that will be submitted later during this comment period.

4 Comments today are directed in two general
5 areas, the first being that EPA has not met the legal
6 criteria required to issue NCPs, and the second of which
7 is that EPA has not met statutory requirements for
8 determining the appropriate penalty amount.

9 I'll start with our comments regarding EPA not
10 having met the legal re -- legal criteria required to
11 issue NCPs.

12 NCPs are intended to provide a limited
13 exception to meeting regulatory emissions standards
14 where EPA finds that the regulatory lead time it has
15 provided is insufficient to enable manufacturers to
16 develop the technology necessary to meet the standards.
17 By paying NCPs, such manufacturers are allowed on a
18 limited basis to produce and sell engines that do not
19 comply with the standard. Congress recognized that an
20 escape clause is desirable under certain limited
21 circumstances where the required technology does not yet
22 exist so that technological laggards are not immediately
23 forced out of the marketplace when EPA promulgates the
24 more stringent standards.

25 The Clean Air Act permits EPA to establish

1 NCPs within certain specified statutory limits. By
2 regulation the specific additional criteria must be met
3 for EPA to establish the availability of NCPs and to set
4 an NCP amount for a given emission standard. In
5 establishing NCPs for the 2020 -- 2010 NOx standard
6 available to heavy-duty engines in model years 2012 and
7 2013, and proposing to establish NCPs available to
8 medium and heavy-duty engines in model years 2012 and
9 later, EPA has not met the statutory and regulatory
10 requirements.

11 First, there is no new or revised emission
12 standard in 2012. There must be a new or revised
13 emission standard that is more stringent than the
14 previous standard for the pollutant, or the existing
15 standard for the pollutant must become more difficult to
16 achieve because of new or revised standards. Here there
17 is no new or revised NOx standard. The standard is the
18 same for 2012 as it was for 2010, and it was promulgated
19 in 20 -- 2001 with adequate notice to manufacturers.

20 All of EPA's previous NCP rulemakings were
21 conducted before or at the same time that the emission
22 standards were taking effect. Most were established one
23 to two years before the standards became effective. For
24 example, NCPs for the 2004 standards were promulgated in
25 2002, two years before the standards became effective.

1 It is now 2012, 11 years after the NOx
2 standards were promulgated in 2001 and two years after
3 the NOx standard became fully effective. The regulatory
4 provisions cannot reasonably be read to allow for such
5 belated NCP determination.

6 In attempting to justify its establishment of
7 NCPs, EPA conveniently ignores the fact that it is now
8 2012 and instead focuses it on the fact that the 2010
9 standard was lower than the 2004 standard. EPA also
10 states, quote, when promulgated in 2001 the Agency
11 concluded that the .2 gram per horsepower hour NOx
12 standard was a technology force in standard, end quote.
13 EPA's conclusion 11 years ago has no bearing on whether
14 there now exists a new or revised and more stringent
15 emission standard applicable to the current 2012 model
16 year for which EPA seek -- seeks to set NCPs.

17 Substantial work is no longer required to meet
18 the 2010 NOx standard. EPA must find that substantial
19 work will be required to meet the emission standard.
20 Substantial work is defined as, quote, the application
21 of technology not previously used in an engine or
22 vehicle class or subclass, or the significant
23 modification of existing technology or design parameters
24 needed to bring the vehicle or engine into compliance,
25 end quote.

1 EPA cannot find that substantial work is
2 required to meet the 2010 NOx standard now that the SCR
3 has been used successfully in heavy-duty diesel engines,
4 including engines manufactured by Navistar for other
5 markets.

6 The rest of the industry was able to implement
7 SCR in time to meet the 2010 NOx standard. Now,
8 nonconforming manufacturers face a much easier task to
9 implement SCR technologies, since their competitors have
10 laid out the difficult ground work, developing new
11 technology, gearing up suppliers and establishing the
12 necessary infrastructure required for an effective SCR
13 solution. EPA has recognized that this situation where
14 all engine manufacturers except one already met the
15 standard cannot justify a substantial work finding where
16 the Agency -- Agency said obviously substantial effort
17 would not be required if many manufacturers' vehicle
18 engines were already meeting the revised standard or
19 could do so with relatively minor calibration changes or
20 modifications.

21 While substantial work was required before
22 model year 2010, it could no longer be said to be needed
23 in 2012, two years after SCR was implemented in the same
24 class of engine by every other manufacturer in the
25 industry. For EPA to insist otherwise gets the

1 regulatory analysis backwards. Such an approach would
2 justify NCPs any time new technology is used to meet an
3 emission standard, a result Congress surely did not
4 intend under the Clean Air Act.

5 There is no technological laggard. EPA must
6 find that there is likely to be a techno --
7 technological laggard, which EPA has explained is,
8 quote, a manufacturer who cannot meet the emission
9 standard due to technological, not economic,
10 difficulties and who in the absence of NCPs might be
11 forced from the marketplace, end quote. The distinction
12 between true technological laggards and economic
13 laggards, particularly intentional economic laggards, is
14 critical here. Quote, NCPs were intended to give a
15 manufacturer that has made every effort to comply but
16 has been unable to achieve compliance a chance to
17 continue to participate in the marketplace, end quote,
18 and as EPA has said an emission standard may become more
19 difficult to meet and substantial work may be required
20 for compliance, but if that work merely involves
21 transfer of well developed technology from another
22 vehicle class it is unlikely that a technical laggard
23 would develop, end quote.

24 It is undisputed that SCR is a proven
25 technology adopted by the rest of the industry and at

1 the end of this rulemaking EPA should recognize that the
2 work involved in meeting the 2010 NOx standard now
3 merely involves the transfer of well-developed
4 technology and that in fact no technical laggard
5 actually exists.

6 To the extent EPA considered this factor in
7 proposing to establish NCPs, it offered an ill-fitting
8 justification. According to EPA, the nonconforming
9 manufacturer is a technical lag -- laggard because of --
10 because it, quote, intends to use a different technology
11 to meet the NOx standard, since it has not yet submitted
12 an application for certification for any model year 2012
13 heavy-duty diesel engines that would not require
14 emissions credits, end quote. In fact, on January 31st,
15 2012, the same day that the Interim Final Rule was
16 published in the Federal Register and that NCPs took
17 effect, the nonconforming manufacturer submitted a
18 certification application for .2 gram per brake
19 horsepower hour engine to the EPA. Accordingly, a
20 critical factual predicate of EPA's rulemaking has been
21 proven incorrect on the same day that it published the
22 Interim Final Rule and NPRM in the Federal Register.

23 Thus, the engine manufacturers apparently have
24 a choice of two technology paths for compliance; the EGR
25 solution to technology solution promoted as capable of

1 meeting the standard for years by Navistar, or the SCR
2 technology proven by the rest of the industry and used
3 for more than two years. The indisputable existence of
4 either engine technology makes it impossible for EPA to
5 conclude that there is a technological laggard, or that
6 substantial work is still required.

7 EPA has not met statutory requirements for
8 determining the appropriate penalty amount. Even if EPA
9 concludes -- erroneously concludes that the regulatory
10 prerequisites have been met, the Agency still must
11 establish a penalty that is at the level expressly
12 required by the Clean Air Act. The Act mandates that
13 any NCPs set by EPA must, quote, remove any competitive
14 disadvantage to manufacturers whose engines or vehicles
15 achieve the required degree of emissions reduction, end
16 quote. The penalty levels set for in the Interim Final
17 Rule and NPRM do not meet the statutory obligation. The
18 NCP amount proposed by EPA in the NPRM, and set in the
19 Interim Final Rule comes nowhere near approximating the
20 true cost of producing an engine that is compliant with
21 the 2010 NOx standard. EPA's proposal sets a maximum
22 penalty of \$1,919 per heavy-duty engine, for engines
23 that emit more than double the standard. EPA's current
24 figure is a fraction of the \$12,210 penalty established
25 for the same degree of NOx exceedance for the 2004 NOx

1 standard, which was EPA's most recent NCP rule for
2 heavy-duty engines.

3 Unlike the 2010 NOx standard, which to date
4 has required a new type of emissions control technology,
5 the entire industry met the 2004 NOx standard using
6 in-cylinder emissions control strategies that had
7 already been developed. EPA has provided no technical
8 explanation for why the current standards, which to date
9 have only been met by new SCR technology, are not more
10 costly than the NCPs for the 2004 NOx standard.

11 In fact, the NCP level is so low that
12 compliant manufacturers are effectively being forced to
13 consider manufacturing engines that do not meet the NOx
14 standard in order to exploit the competitive advantage
15 afforded by the below-market NOx NCP. The NCP
16 regulations do provide all manufacturers the option of
17 EPA provided NCPs, not just one manufacturer. The only
18 solution for this result is for the agency to ensure
19 that the NCP penalty is in fact high enough to encourage
20 full compliance with the NOx standard by those
21 manufacturers who possess the necessary emissions
22 control technology.

23 EPA's proposed penalty is too low for a number
24 of reasons. Here we discuss three.

25 First, baseline engine costs. EPA's NPRM does

1 not adequately reflect the actual cost of incorporating
2 compliant technology in large part because it assumes
3 the baseline engine that already utilizes SCR
4 technology. By the company that needs NCPs -- but the
5 company that needs NCPs does not already have SCR
6 technology in place on any of its U.S. engines.
7 Further, neither did the complying manufacturers utilize
8 SCR technology when the standard was promulgated in
9 2001. The complying manufacturers invested in the
10 research and development, hardware components, software
11 infrastructure, and other advancements necessary to
12 design and produce new engine and after-treatment
13 designs that are actually compliant with the 2010 NOx
14 standard. Investment that Navistar has thus far chosen
15 not to make. It is unreasonable and unfair to give
16 nonconforming manufacturers the benefit of assuming a
17 baseline engine that incorporates the very technology
18 that they chose not to adopt. By assuming a baseline
19 engine with SCR technology and factoring in only the
20 incremental costs associated with adjusting that SCR
21 technology from a .5 to a .2 gram NOx level, EPA has
22 completely vitiated the NOx -- the NCP calculation and
23 the intent of the Clean Air Act.

24 Second, EPA's approach to fuel economy is
25 erroneous. EPA has indicated that one of the reasons it

1 chose an engine with SCR technology as the baseline
2 engine was for the purpose of addressing the wide range
3 of fuel economy performance between engines using
4 different emission control technologies. EPA's fuel
5 economy concerns are misplaced and have resulted in an
6 irrational and arbitrary cost methodology.

7 In the past, EPA appropriately attempted to
8 capture all of the additional cost burdens that accrue
9 to compliant manufacturers in tonec -- in connection
10 with the use of compliant engines. These costs included
11 the present value of a compliant manufacturer's reduced
12 fuel economy because purchasers would value compliant
13 trucks less, and this fuel economy penalty would be
14 translated to a reduced purchase price and thus an
15 increased burden on compliant manufacturers. In this
16 case, the company seeking NCPs has repeatedly claims
17 that it -- claimed that its emissions technology results
18 in the same or better net fuel economy -- fluid economy,
19 and thus there is no net benefit to operators associated
20 with SCR. Accordingly, EPA should not predicate its
21 rule on a nonexistent hypothetical baseline engine with
22 SCR simply to address an operating cost disparity that
23 does not exist, according to the company seeking the
24 NCPs.

25 Thirdly, costs of a compliant engine are

1 underestimated. EPA's past NCP rulemakings have
2 established a number of costs that the Agency has
3 determined should be included in calculating the level
4 of NCP penalties. These costs include research and
5 development costs, hardware costs, warranty and repair
6 associated costs, revenue impact of additional vehicle
7 weight, and purchaser -- purchaser perception effects.

8 If EPA had included these costs in calculating
9 the penalty level in the NPRM and the Interim Final
10 Rule, it would have identified a penalty at the upper
11 limit that is many times higher than what was included
12 in the proposal. EPA should consult more carefully with
13 compliant manufacturers to ensure that it has captured
14 all of the costs of actual compliance and reflect that
15 significantly higher amount in any final rule that is
16 generated.

17 We would be happy to share our actual costs
18 with EPA on each of these elements in a setting that
19 ensures that our propri -- proprietary cost information
20 will be maintained as confidential business information
21 by the Agency.

22 The opportunity for compliant manufacturers to
23 comment on the record is especially important in the
24 context of NCP rulemaking, because the statute
25 authorizing NCPs requires the Agency to ensure that the

1 NCP does not result in any competitive disadvantage to
2 compliant manufacturers. The only way to ensure that is
3 to carefully and thoroughly consult with compliant
4 manufacturers and to fully understand all of the costs
5 associated with their compliance. Thus, we appreciate
6 this opportunity to comment and look forward to
7 providing more detailed input to the Agency on all of
8 these issues.

9 MR. GRUNDLER: Thank you, Mr. Keski.

10 Again, I would like to encourage Daimler to
11 share that cost information, just as I would encourage
12 Volvo to share that information. That would be very
13 useful to us.

14 Any questions by the panel?

15 MR. SPEARS: I have no questions.

16 MR. KESKI-HYNNILA: Thank you.

17 MR. GRUNDLER: Thank you.

18 Our last testifier is Mr. Steven Covey from
19 Navistar. Welcome.

20 MR. COVEY: Good morning. I am Steve Covey,
21 Senior Vice President and General Counsel of Navistar,
22 Inc.

23 Navistar appreciates the opportunity to
24 provide input on an issue that is of critical importance
25 to our company. From the outset, let me say that EPA is

1 correct in determining that NCPs are necessary and
2 warranted at this time for Navistar and perhaps for
3 other manufacturers as well.

4 At Navistar we take our environmental
5 responsibilities seriously. Our perspective is that
6 environmental solutions are something we should worry
7 about so our customers don't have to.

8 Over the past 25 years Navistar has taken the
9 lead in this industry in developing sustainable
10 transportation solutions that have resulted in dramatic
11 reductions in NOx and other emissions from our diesel
12 engines and vehicles.

13 Navistar is a company of firsts.

14 Navistar pioneered the first North American
15 smokeless diesel engine in 1989.

16 Navistar was the first North American truck
17 manufacturer to go to market with a diesel hybrid
18 solution.

19 Navistar was the first school bus manufacturer
20 to go to market with diesel electric hybrids.

21 Navistar was the first manufacturer to meet
22 the 2007 particulate matter and hydrocarbon standards
23 six years ahead with our green diesel technology school
24 bus.

25 Navistar to this date is still the only

1 manufacturer that offers a plug-in hybrid school bus.

2 And Navistar is the first major global
3 manufacturer to bring an all-electric solution to the
4 commercial truck market with its eStar, the first
5 medium-duty commercial vehicle to receive EPA's clean
6 fleet fuel vehicle certification and the California Air
7 Resources Board's zero emissions vehicle certification.

8 No other truck manufacturer brings as many low
9 emitting diesel, hybrid, natural gas and all-electric
10 solutions to the commercial truck market as Navistar.

11 Navistar's commitment to environmental
12 leadership extends to the current NOx limits for
13 heavy-duty diesel engines. In 2001 EPA promulgated
14 tough new emission standards for these engines,
15 including a near-zero .2 gram NOx standard. When other
16 diesel engine and truck manufacturers sued EPA to
17 overturn those standards, Navistar and only Navistar
18 fought on the side of EPA to uphold them, including the
19 two-tenths of a gram NOx standard that is now in effect.

20 At the time the current standard was
21 promulgated in 2001, EPA observed that there were
22 several foreign manufacturers who wanted to use liquid
23 urea-based SCR systems to meet the two-tenths of a gram
24 NOx standard. When EPA published the Final Rule in the
25 Federal Register, however, it noted there were

1 significant feasibility issues surrounding the
2 effectiveness of such SCR systems, many of which stem
3 from the unique need of driver interaction with the
4 system to replace the urea necessary for the SCR to
5 function.

6 At that time EPA concluded the two-tenths of a
7 gram NOx standard was infeasible with SCR technology.
8 That meant if SCR was the only technology available EPA
9 was prohibited by the Clean Air Act from promulgating
10 the two-tenths of a gram NOx standard at all. So EPA
11 looked to other technology, and that is exactly what
12 Navistar did as well.

13 Navistar decided to do what it has always done
14 for NOx, clean up combustion emissions in the engine
15 rather than rely on an after-treatment device in the
16 exhaust stream. SCR is especially undesirable in
17 Navistar's view because it is unreliable and offloads
18 compliance responsibility to the customers instead of
19 the engine manufacturers. Given the near-zero standard,
20 a clean burning, in-cylinder solution was a significant
21 and capital intensive solution, but that did not deter
22 Navistar from meeting the challenge.

23 Since 2001 Navistar has devoted tens of
24 thousands of employee hours in the development of a
25 clean burning, in-cylinder solution and invested more

1 than 700 million dollars in development of a clean
2 burning, in-cylinder solution.

3 And as a result of that investment, Navistar
4 succeeded in developing a clean NOx technology, advanced
5 exhaust gas recirculation, or EGR, in order to comply
6 with the two-tenths of a gram NOx standard. Navistar is
7 the only manufacturer working to do so.

8 Navistar rejected off-the-shelf SCR technology
9 because of its inability to achieve the two-tenths of a
10 gram NOx standard on a fleet-wide basis and the
11 increased maintenance and emissions control burden for
12 owners and operators. Navistar also found, among other
13 things, that by comparison to a clean burning engine SCR
14 technology is a primitive and unreliable emission
15 control technology. It is ineffective in many driving
16 situations EPA can expect a heavy-duty diesel engine to
17 encounter in the real world, both on the highway and in
18 urban areas. SCR technology is the wrong choice for
19 customers and for the environment.

20 In sum, Navistar's choice was not a gamble but
21 a commitment. It was a commitment to an alternative,
22 more reliable emission control technology that stands on
23 its own. It is an alternative that EPA and the public
24 need now and which we predict they will need even more
25 in the future.

1 As we look down the road, Navistar believes
2 that a complicated system of sensors and algorithms for
3 so-called driver DEF inducements, which ultimately
4 depend on one million truck drivers to keep high levels
5 of NOx emissions from being sent into the air we
6 breathe, will not work. In short, we believe that EPA
7 was correct when it reached precisely this conclusion
8 ten years ago.

9 Having the Navistar alternative, an engine
10 that meets the standard of the exhaust manifold through
11 clean combustion, will be essential to protect the
12 environment. Advanced EGR technology will become the
13 emission control technology of choice for our
14 competitors after SCR's failure becomes clear.

15 In sum, Navistar pursued Advanced EGR because
16 it is the superior option for our customers, for the
17 environment, and for our industry. From start to finish
18 we believe it is the manufacturer's responsibility, not
19 the customers, no ensure emissions compliance. Navistar
20 remains fully committed to meeting the current near-zero
21 standard with its clean burning, EGR-only engines, and
22 we believe we have succeeded in doing so.

23 Navistar supports and needs the proposed NCP
24 rule. Although Navistar submitted an application to EPA
25 for certification of a two-tenths of a gram NOx engine

1 based on clean-burning, in-cylinder technology, EPA has
2 not yet issued the certificate of conformity. Navistar
3 is working with EPA to resolve technical issues relating
4 to advanced EGR technology, and in particular working to
5 demonstrate that the on-road NOx performance of our
6 technology is superior to the SCR alternative.

7 Until Navistar reaches agreement on these
8 issues with EPA, however, we need a temporary bridge to
9 keep some engines and vehicles in the market. As
10 everyone in this room is well aware, that is exactly the
11 purpose of NCPs. Congress provided for NCPs in the
12 Clean Air Act, with a mandate to adopt them, in
13 precisely those situations where a manufacturer who has
14 chosen a different technology path to compliance
15 requires a bridge to stay in the market. Accordingly,
16 Navistar is here today to support the proposed NCP rule.

17 In the proposed rule, EPA has correctly
18 determined that the NCPs proposed in its Notice of
19 Proposed Rulemaking for model year 2012 and later diesel
20 engines are necessary because for technological reasons
21 Navistar needs NCPs to ensure continued production for
22 certain families of its heavy-duty diesel engines.
23 Temporary relief is required so that a better
24 environmental and customer solution is possible.

25 EPA's long-established criteria for

1 promulgating NCPs are clearly met in this case. That
2 Navistar is the manufacturer most likely to sell engines
3 and pay NCPs is irrelevant. Where NCPs are concerned,
4 Congress and EPA expressly contemplated a situation
5 where some manufacturers have been certified to meet a
6 particular standard while other manufacturers need a
7 bridge to certification.

8 Congress prescribed a solution of a penalty to
9 account for differences in the costs of compliance
10 between those who chose one path and those who chose the
11 more difficult path, not the ouster of any competitor
12 from the market. In other words, EPA's proposed rule
13 fulfills a mandate delivered by Congress to EPA.

14 In this case, because Navistar invested as
15 much, or more, in NOx compliance as any of its
16 competitors, and because Navistar's solution actually
17 provides superior on-road NOx control, EPA's proposed
18 NCPs are, in our view, too high. The NCP calculation
19 used by N -- EPA significantly undervalues the huge
20 investment that Navistar already has made in its
21 clean-burning combustion technology.

22 Moreover, Navistar rejects the suggestion that
23 there is a competitive disadvantage to the SCR engine
24 makers, just as we reject the idea that they are the
25 technological leaders here. The only competitive

1 disadvantage is to Navistar, not the SCR makers who used
2 an off-the-shelf technology that purportedly meets the
3 standard in the test cell but pollutes heavily on the
4 highway, a reality that is currently ignored in SCR
5 certification testing.

6 We will, of course, submit more detailed
7 written comments in support of this rulemaking. We look
8 forward to working with EPA on the next steps. And I
9 thank you.

10 MR. GRUNDLER: Thank you, Mr. Covey. Any
11 questions for Navistar?

12 MR. MOULIS: (Indicating).

13 MR. SPEARS: Just a second. I have one
14 question. Thank you very much. I just had one
15 clarifying question.

16 We heard in some earlier testimony that a
17 subsidiary of Navistar is producing or has available an
18 engine with the SCR technology. Would you care to
19 comment or clarify that statement at this time?

20 MR. COVEY: Thank you. I appreciate the
21 question. We'll, of course, provide information
22 regarding that testimony in our written comments, but
23 generally speaking, yes, the answer is yes.

24 MR. SPEARS: Okay. Thank you.

25 MR. GRUNDLER: No further questions? Thank

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you, Mr. Covey.

MR. COVEY: Thank you.

MR. GRUNDLER: Two points before we wrap up.
One, if you didn't get a chance to sign in or if you
would like to get written comments of this testimony,
please see JoNell over there.

Secondly, a reminder that we'll keep the
record open until April 4th for any supplemental or
rebuttal testimony.

Thank you very much. This concludes our
hearing.

(11:08 a.m. hearing concluded.)

1 STATE OF MICHIGAN)

2

3 COUNTY OF WASHTENAW)

4

5 I certify that this transcript is a complete, true
6 and correct record of the hearing conducted to the best of my
7 ability.

8

9 I also certify that I am not a relative or employee
10 of a party, or a relative or employee of an attorney for a
11 party, have a contract with a party, or am financially
12 interested in the aforementioned action.

13

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25 WEDNESDAY, MARCH 14, 2012
Notary Public, Washtenaw County, Michigan
Acting in Washtenaw County
My Commission Expires: 12-15-12

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